

RECORDATION NO. 28095 FILED

DEC 16 '09 -12 20 PM

SURFACE TRANSPORTATION BOARD

OF COUNSEL
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December 16, 2009

Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Dear Section Chief,

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Master Locomotive Leasing Agreement RTEX-2009-10, dated as of August 19, 2009, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Lessor: Rail Trusts Equipment, Inc.
1661 Beach Boulevard
Jacksonville Beach, FL 32250

Lessee: Haverhill North Coke Company
2446 Gaillia Pike
Franklin Furnace, OH 45629

Section Chief
December 16, 2009
Page 2

A description of the railroad equipment covered by the enclosed document is:

4 locomotives: RTEX 97, RTEX 202, RTEX 4005 and RTEX 4994

A short summary of the document to appear in the index is:

Master Locomotive Leasing Agreement RTEX-2009-10.

Also enclosed is a check in the amount of \$41.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Alvord', with a long horizontal flourish extending to the right.

Robert W Alvord

RWA/sem
Enclosures

**Rail Trusts Equipment, Inc.
Master Locomotive Leasing Agreement
RTEX-2009-10**

DEC 16 '09 -12 20 PM

SURFACE TRANSPORTATION BOARD

This Agreement, RTEX-2009-10, made this 19 day of Aug, 2009, by and between Rail Trusts Equipment, Inc. ("RTE") 1661 Beach Boulevard, Jacksonville Beach, Florida 32250, a Florida Corporation, and Haverhill North Coke Company, ("Lessee") an Ohio company, with its principal place of business at 2446 Gallia Pike, Franklin Furnace, OH, 45629

I. Scope and subject matter of Agreement:

RTE agrees to furnish and lease to Lessee, and Lessee agrees to accept, use and lease upon the terms and conditions hereinafter set forth, the locomotive covered by the rider attached hereto and such additional riders as may be added hereto from time to time by agreement of the parties, and any and all other locomotives delivered to and accepted by Lessee (hereinafter, each a "Locomotive" and, collectively, "Locomotives"). Each such rider shall set forth the number of Locomotives, the rental rate, term of use, identification numbers for each Locomotive, destruct value for each Locomotive and other pertinent information that may be reasonably desired by both parties.

II Delivery and use:

RTE agrees to deliver each Locomotive to Lessee within a time to be reasonably agreed to by the parties at Monroe, Georgia. RTE's obligation to such delivery shall be subject to and excused in the event of any and all delays resulting from causes beyond its control. Lessee agrees to use each Locomotive exclusively in its own service, except as hereinafter provided, at all times complying with all governmental laws, regulations, and requirements, as well as any applicable rules of the Federal Railroad Administration ("FRA"), and no Locomotives shall be used or driven beyond the boundaries of the United States or Canada except with prior written consent of RTE. Lessee agrees that if any Locomotives are used outside of the continental United States, Lessee shall reimburse RTE for any custom duties, taxes, investment tax credit deductions or other expenses resulting from such use. Such reimbursement shall be made forthwith upon written demand for payment by RTE to Lessee.

III Acceptance:

Each Locomotive shall be subject to inspection by Lessee upon notification to Lessee of its availability by RTE. Subsequent to receipt of such notification of availability of each Locomotive, Lessee shall have a period of fourteen (14) days thereafter, in which to inspect such Locomotive and notify RTE of any defects, non-conformities, or any other matters whatsoever which would impair or tend to impair the acceptability of such Locomotive. Failure so to notify RTE with respect to any Locomotive shall constitute acceptance thereof by Lessee, and this shall be conclusive evidence of the fit and suitable condition of such Locomotive for the purposes intended and their conformity to the terms, provisions, and representations of this Agreement. It is specifically understood, however, that no Locomotive is warranted to be suitable for any particular or general purpose use, and it shall be the duty of the Lessee to ascertain the acceptability of each Locomotive upon inspection.

IV Receipt of Security Deposit:

RTE acknowledges receipt from Lessee of the sum of (USD) each Locomotive to be leased hereunder pursuant to Rider No. 01 and Rider No. 2, to be held as a security deposit as hereinafter set forth. Said security deposit may, at the option of RTE, be used or retained on account of and/or the payment of any rent in default or other sums which RTE may expend by reason of any default of Lessee, or be used or retained by RTE on account of any damage resulting to RTE by virtue of the breach of any of the covenants and conditions to be performed on part of the Lessee; provided, however, that nothing herein contained shall be so construed to mean that the use of said moneys at the option of RTE as hereby provided shall prevent RTE from taking such proceedings as it may be legally and lawfully entitled to take, and suing for and collecting such damages as may result from and breach or default on the part of Lessee of any covenant or covenants or conditions of this Agreement. It is understood that upon the termination of this Agreement through no fault of Lessee or upon the expiration of this Agreement, if the Lessee shall not be in default in the payment of any of the sums required to be paid under the terms of this Agreement or shall not have breached any of the covenants and conditions of this Agreement, the security deposit shall be promptly refunded to Lessee, or applied to the charges for redelivery at end of lease term, subject to the terms and conditions of this Agreement.

V. Payment of Rent:

Lessee agrees to pay the rental charges with respect to each Locomotive at the rate set forth in the applicable rider from the date of delivery of such Locomotive until they are redelivered to RTE with signed acceptance by RTE or its representative within 48 hours of arrival at the delivery destination. Such rental charges shall be paid to RTE at its principal place of business, P.O. Box 50456, Jacksonville Beach, Florida 32240, in advance of the first day of each and every month, without setoff or counterclaim, prorating however any period which is less than a full month. Periods of time less than one day shall count as a full day for the purpose of accruing rental charges. Any payments more than five (5) days late shall accrue interest at the rate of 1.5% per month upon any unpaid balance, computed from the due date thereof, which interest shall be due, owing and payable to RTE on demand. As another option, payment can be made by wire transfer and sent to

ABA# Bank of America, Tampa, Florida
Account of: Rail Trusts Equipment, Inc.
Account Number:

VI Maintenance and Repairs:

Lessee shall promptly notify RTE upon receipt by Lessee of any knowledge of any material damage to any Locomotive. RTE agrees to pay for all necessary maintenance and repairs of each Locomotive, at all times keeping the same maintained in accordance with acceptable industry standards. Any defective locomotive parts replaced during lease term will be of the same EMD model and condition (or better) as noted in the applicable rider. Lessee will be responsible for the following consumable materials: fuel, oil, brake shoes, wiper blades, water and water treatment chemicals. Lessee will also be responsible for all costs of repairs or damage due to negligence or improper use including damages from wrecks or derailments or any other damages beyond the direct control of RTE caused directly or indirectly by Lessee or other persons; provided, that Lessee shall have no such liability if costs of repairs or damages are caused by improper maintenance or other failure by RTE to meet its obligations under this Section VI. Lessee will maintain records of Lessee's use, operation, inspection, repairs and maintenance of each Locomotive while in its possession as shall be necessary to effectuate and document all conditions of this Agreement. RTE by such agents and individuals as it may designate, shall have the right, at

all reasonable time periods following prior written notice to Lessee to go upon the property of Lessee or the property of any third party (to the extent permitted by such third party) where a Locomotive may be located to inspect such Locomotive and records Lessee agrees to use its reasonable efforts to assist RTE in making any such inspection or examination while either a Locomotive or the records thereof are in the possession of any third party No lettering or markings of any kind shall be placed upon any Locomotive by Lessee, except with the prior written consent of RTE.

VII. Casualties to The Locomotives:

In the event that in RTE's reasonable opinion a Locomotive is damaged beyond repair, destroyed, stolen, lost or otherwise rendered unusable, the rental charge with respect to each Locomotive shall terminate upon receipt by RTE of written notification thereof, and payment to RTE of the destruct value as set forth in the rider(s) attached hereto; provided, however, that such destruct value shall not be payable by Lessee where such damage or destruction is caused by improper maintenance or other failure by RTE to meet its obligations under Section VI. In the event that any Locomotive, or fittings, parts, appliances or appurtenances thereto, shall be damaged or destroyed either as a result of the acts of any of the Lessee's employees, agents or representatives or other causes (not including normal wear and tear) beyond the direct control of RTE, Lessee agrees to assume financial responsibility for such damage or destruction and have damages repaired and completed by qualified personnel using OEM parts, or to pay RTE therefore upon demand.

VIII. Indemnities:

Lessee will defend, indemnify and hold harmless RTE from and against (1) any and all loss or damage of or to The Locomotive during the term of this Agreement unless occurring while RTE has physical possession of The Locomotive, and (2) any claim, cause of action, damage, liability, cost of expense (including legal fees and costs) to which The Locomotive may be subject on account of damage to or destruction of any other property or for or on account of personal injuries (whether or not resulting in death or otherwise) or which may be incurred in any manner or for the account of any such locomotive (unless occurring through the sole and exclusive fault of RTE) relating to The Locomotive or any part thereof, RTE will defend, indemnify and hold harmless Lessee from and against. (1) any and all loss or damage of or to The Locomotive and any claim, cause of action, damage, liability, cost of expense (including legal fees and costs) to which The Locomotive may be subject on account of damage to or destruction of any other property or for on account of personal injuries (whether or not resulting in death or otherwise) or which may be incurred in any manner or for the account of any such locomotive relating to the Locomotive or any part thereof occurring while RTE has physical possession of The Locomotive, and including the construction, delivery of The Locomotive to the Lessee's railroad line or siding, leasing or return of the Locomotive, or as a result of the use, maintenance, repair, replacement, operation or other condition therefore occurring through fault of RTE.

IX. Insurance

Lessee will maintain at its sole cost and expense, the following insurance after delivery of a Locomotive, and until all Locomotives have been returned to RTE in accordance with the provisions of this Agreement

A Insurance in an amount not less than the value specified on the attached rider on each Locomotive arising out of all risks of physical loss or damage from any cause whatsoever and against such other risks as are customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged by Lessee

B. Comprehensive public liability and property damage insurance insuring against liability resulting from ownership, maintenance, use or operation of the Locomotive(s) in an amount of _____ per occurrence insuring against liability for death and bodily injury and _____ property damage. All insurance policies shall (I) name RTE as an additional insured with losses under and/or damage policies to be payable to RTE and Lessee as their respective interests may appear; (II) provide that policies will not be invalidated as against RTE or any of its successors because of any violation of a condition or warranty of the policy or application thereof by Lessee, and (III) provides that there shall be no recourse against RTE for the payment of premiums and shall provide for at least ten (10) days prior written notice to be given to RTE by the underwriters in the event of cancellation.

Lessee shall deliver to RTE prior to the execution of this Agreement a certificate of insurance for RTE's approval.

If Lessee shall default in the payment of any premium in respect of any such policies, RTE may, but shall not be obliged to, pay such premium and if RTE does, Lessee shall repay the amount to RTE on demand.

Lessee shall at all times be allowed to satisfy all insurance requirements of this Section IX by self insurance

X. Assignment by Lessee:

Lessee shall make no assignment or transfer of interest under this Agreement in and to any Locomotive without RTE's prior written consent. No right, title or interest in any Locomotive shall vest in Lessee by reason of this Agreement or by reason of the delivery to or the use by Lessee of the Locomotive(s), except the right to use the Locomotive(s) in accordance with the terms of this Agreement. Lessee shall not pledge, mortgage or otherwise encumber or dispose of any Locomotive, and shall not allow any lien or encumbrance to attach or remain thereon.

XI. Remedies upon default:

If Lessee shall fail to perform any of its obligations hereunder for a period of ten (10) days following receipt of written notice from Lessor of Lessee's failure to perform, RTE at its sole and unrestrained election may either (a) terminate this Agreement immediately and repossess any Locomotive, or (b) withdraw any Locomotive from the service of Lessee and deliver the same, or any thereof, to others upon such terms as RTE may see fit. Lessee agrees to take all reasonable steps to assist RTE in redelivering any Locomotive to RTE, and will pay on demand all reasonable costs incurred in redelivery. If RTE shall elect to proceed in accordance with clause (b) above and if RTE during the balance of the term of this Agreement shall fail to collect for use of such Locomotive(s) a sum at least equal to all unpaid rentals hereunder to the stated date of termination hereof plus an amount equal to all expenses of withdrawing such Locomotive(s) from the service of the Lessee and collecting the earnings thereof, Lessee agrees, provided Lessor uses reasonable efforts to re-lease such Locomotive(s) on commercially reasonable terms, to pay upon demand by RTE the amount of any such deficiency. It is expressly understood that RTE at its sole and unrestricted option may terminate this Agreement in the event that a petition in bankruptcy or a petition for a trustee receiver be filed by or against Lessee or in the event that Lessee shall make an assignment for the benefit of creditors, or if there occurs any other event which in RTE's opinion impairs the solvency of lessee or its continuing ability to pay rent for The Locomotive.

XII. Redelivery:

Upon termination of each rider or part thereof, or upon the failure of Lessee to cure any breach of any condition or covenant herein contained within ten (10) days of written notice

by RTE, Lessee agrees to return the Locomotive(s) at Lessee's expense to RTE at Monroe, Georgia or to any point of RTE's choice providing destination cost would be an amount equal to or less than the freight it would have paid to move the Locomotive(s) to Monroe, Georgia. Lessee shall also permit prior to redelivery a joint inspection of the Locomotive(s) by both Lessee and RTE. Lessee will also immediately cause to be repaired any damage disclosed by such inspection (outside of normal wear and tear and damage caused by improper maintenance or other failure by RTE to meet its obligations under Section VI). The Locomotive(s) shall to be redelivered in the same or as good condition as received (outside of normal wear and tear and damage caused by improper maintenance or other failure by RTE to meet its obligations under Section VI), in a condition suitable for interchange movement as defined by the FRA, free from all charges and liens which may result from any act or default of Lessee, and free from all accumulations or deposits resulting from commodities transported by or with the Locomotive(s) while in the service of Lessee. If any Locomotive is not returned to RTE free from such accumulations or deposits or is not suitable for interchange movement, Lessee shall reimburse RTE for any expense incurred in cleaning such Locomotive or making same suitable for interchange movement. If Lessee shall fail or refuse to deliver the Locomotive(s) or permit or join in an inspection as aforesaid, RTE shall have the right without further notice or demand, and in addition to, and without constituting a waiver of, any other remedy, claim or right hereunder or at law, to terminate this Agreement and to take possession of the Locomotives where found and remove them at Lessee's expense, and for such purpose only, Lessee authorizes RTE or its duly authorized agent to enter any premises occupied by Lessee

XIII. Taxes and Reports:

Lessee will prepare and file at its own expense, all schedules, reports or statements as required by any local, State, Federal or other governmental regulating authority with respect to the Locomotive(s). Lessee agrees to assume responsibility for and to pay any applicable Federal, State, or local sales, use, personal property or similar taxes resulting from the lease or use of the Locomotive(s). In the event that Lessee fails to take any action required by this paragraph, RTE, at its option may perform the same, and Lessee will reimburse RTE on demand for the costs of the same

XIV Assignment by Lessor:

It is understood that the Locomotive(s) furnished Lessee under this Agreement may, at the time of delivery to Lessee or at some future time during the term of this Agreement, be subject to the terms of a mortgage, deed of trust, equipment trust, pledge or assignment or similar security arrangement. Lessee agrees that the Locomotive(s) may be stenciled or marked to set forth the ownership of the Locomotives in the name of a mortgagee, trust, pledge, assignee or security holder and that this Agreement and the Lessee's rights hereunder are and shall at all times be subject and subordinated to any and all rights of any mortgage, trustee, pledge or security holder. As to the Locomotive(s) subject hereto, this Agreement and the rentals hereunder may have been assigned and may in the future be assigned to the holder, if any, of the superior lien from time to time on the Locomotive(s) as determined with reference to the filings under Section 20 (c) of the Interstate Commerce Act; however, until notified to the contrary by RTE, Lessee is to pay all rentals to the order of RTE. Lessee hereby consents to and accepts such assignment. Lessee agrees that no claim or defense, which Lessee may have against RTE, shall be asserted or enforced against any assignee of this Agreement

XV Miscellaneous:

This Agreement shall be binding upon the parties hereto, their respective successors, assigns and legal representatives, and shall remain in full force and effect from the date hereof until the completion of the leasing arrangement shown on attached riders of the last Locomotive or Locomotives hereunder, and all such Locomotives are returned to RTE

Any dispute between RTE and Lessee pertaining to, either directly or indirectly, the Locomotive(s) or this Agreement shall be governed by the laws of the State of Florida. The contract stipulated by the parties to have been made in the State of Florida and venue and location for any proceeding by court action is also stipulated by the parties to be in the State of Florida. Additionally, any dispute between RTE and Lessee as to any of RTE's obligations under this Agreement of any nature whatsoever shall not excuse payment of rent or other performance by Lessee pending resolution of such dispute whether by court action or otherwise, and Lessee expressly does not waive rights, if any to counterclaim for, set-off or seek a recoupment in connection with any obligation to it of RTE.

In the event RTE or Lessee retains an attorney to enforce its rights under this Agreement, whether by suit or otherwise, Lessee or RTE, as the case may be, shall be liable for the reasonable cost thereof

This Agreement and any riders executed by the parties with respect to Locomotives constitutes the whole agreement between RTE and Lessee, and no other promises, agreements or representations have been made All notices required by this Agreement shall be sent certified mail, return receipt, to the principal address noted above

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in two counterparts (each of which shall be deemed an original) the day and year first written above.

Attest.

Witness



RAIL TRUSTS EQUIPMENT, INC

BY:

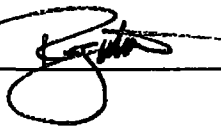
Name:

Title:



Attest:

Witness

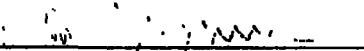


HAVERHILL NORTH COKE COMPANY

BY:

Name:

Title:



Rail Trusts Equipment, Inc.

By: X Keith A. Gibbs

Printed Name: KEITH A GIBBS

Title: President

STATE OF Georgia)
COUNTY OF Camden)

On this 10 day of December, 2009, personally appeared before me Keith A. Gibbs who being duly sworn by me says that he/she is President of Rail Trusts Equipment and that he/she signed executed and delivered the foregoing instrument on the day and year therein mentioned

(SEAL)

NOTARY PUBLIC

Robin L. Kennedy
Signature

Robin L. Kennedy
Printed Name
State of Georgia

My commission Expires _____

Notary Public, Camden County, Georgia
My Commission Expires Sept. 8, 2011

Rider No. 01
To Master Locomotive Agreement No. RTE-2009-10

It is hereby agreed that effective Aug 19, 2009, 2009, this Rider shall become a part of Master Locomotive Leasing Agreement No. RTE-2009-10, between Haverhill North Coke Co., and Rail Trusts Equipment, Inc., dated Aug 19, 2009, and the locomotive described herein shall be placed in service subject to the terms set forth below.

Locomotive Description:	Unit:	RTEX 202
	Model:	EMD SD38AC
	Engine:	16-645E
	Generator:	AR10/D14
	Aux. Gen.:	18KW
	Air Brake:	26L
	Traction Motors:	6 each D77
	Trucks:	SD
	Wheels:	New
	MU:	Yes
	Dynamic Brakes:	Yes
	Equipped with new Kim Hotstart System	
	Equipped with Catron Remote	

Terms of Rent: \$ (USD) Interim rent per month payable monthly through December 31, 2009 in advance per Paragraph V of the Leasing Agreement. Rent shall be prorated for the first month beginning on the date of delivery to Lessee, unless rejected. Beginning January 1, 2010 this Rider shall merge into Rider 02 and monthly rent and destruct values stated therein shall apply.

Destruct Value:	<u>Months</u>	<u>Value (USD)</u>
	1-12	

Attest:

Witness

RAIL TRUSTS EQUIPMENT, INC.

BY:

Name:

Title:

Attest:

Witness

HAVERHILL NORTH COKE COMPANY

BY:

Name:

Title:

Rider No. 02
To Master Locomotive Agreement No. RTE-2009-10

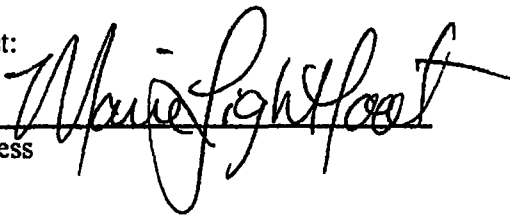
It is hereby agreed that effective January 1, 2010, this Rider shall become a part of Master Locomotive Leasing Agreement No. RTE-2009-10, between Haverhill North Coke Co., and Rail Trusts Equipment, Inc., dated August 19, 2009, and the locomotives described herein shall be placed in service subject to the terms set forth below:

Locomotive Descriptions: see attachment A for description and Destruct Values

Terms of Rent: \$ (USD per month payable monthly in advance per Paragraph V of the Leasing Agreement for a period of 60 months from January 1, 2010. Lessee may extend the term for an additional 12 month period at fair market value upon at least 60 days prior written notice delivered to RTE prior to the end of any term or renewal term.

Attest:

Witness

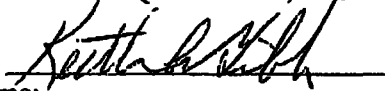


RAIL TRUSTS EQUIPMENT, INC.

BY:

Name:

Title:



Attest:

Witness



HAVERHILL NORTH COKE COMPANY

BY:

Name:

Title:



Schedule A
To Master Locomotive Agreement No. RTE-2009-10

- (1) Locomotive Description: Unit - RTEX 97
Model - EMD SW1200
Equipped – Kim Hotstart System

<u>Destruct Value:</u>	<u>Months</u>	<u>Value (USD)</u>
	1-12	
	13-24	
	25-36	
	37-48	
	49-60	

- (2) Locomotive Description: Unit - RTEX 4005
Model - GP9M
Equipped – Kim Hotstart System
Equipped – Cattron Remote

<u>Destruct Value:</u>	<u>Months</u>	<u>Value (USD)</u>
	1-12	
	13-24	
	25-36	
	37-48	
	49-60	

- (3) Locomotive Description: Unit - RTEX 4994
Model - GP38AC
Equipped – Kim Hotstart System
Equipped – Cattron Remote

<u>Destruct Value:</u>	<u>Months</u>	<u>Value (USD)</u>
	1-12	
	13-24	
	25-36	
	37-48	
	49-60	

- (4) Locomotive Description: Unit - RTEX 202
Model – SD38AC
Equipped with Kim Hotstart System
Equipped with Cattron Remote

<u>Destruct Value:</u>	<u>Months</u>	<u>Value (USD)</u>
	1-12	
	13-24	
	25-36	
	37-48	
	49-60	

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated

12/16/09



Robert W Alvord